

## Problem-Solving Courts in Comparative Law: Combination of Therapy and Responsibility

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**Abstract:** This paper examines the innovative approach of problem-solving courts within the framework of comparative law, emphasizing the integration of therapeutic jurisprudence and individual criminal responsibility. By analysing various models from different jurisdictions, the study highlights how these courts effectively address underlying issues in criminal behaviour, such as substance abuse and mental health problems, through tailored interventions. The research draws on a comparative analysis to explore the effectiveness of these courts in reducing recidivism, enhancing offender rehabilitation, and promoting social reintegration. The paper also discusses the challenges and potential of this approach in balancing the goals of therapy and legal accountability. Through a comprehensive review of judicial and policy frameworks, this study provides valuable insights into the evolving role of the judiciary in addressing complex social issues and the potential of problem-solving courts as a transformative tool in the criminal justice system.

**Keywords:** problem-solving courts, therapeutic jurisprudence, drug courts, mental health in law, offender rehabilitation, judicial innovation.

[Graphical abstract](#)



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## INTRODUCTION

The regular judicial system's insensitivity towards individuals with drug or alcohol addiction catalysed the development of therapeutic justice in comparative law, aiming to enhance rehabilitation and reduce recidivism within the criminal process. This shift, particularly prominent in the Anglo-Saxon legal tradition, led to a significant increase in problem-solving courts across the United States,<sup>2</sup> and influenced similar reforms in Canada, Australia, New Zealand, the United Kingdom, and several European countries.

The concept of problem-solving courts marks a transformative shift in the criminal justice system, merging legal processes with therapeutic interventions to address offenders' underlying issues, evolving as a response to the shortcomings of traditional courts. These courts embody a fusion of therapeutic jurisprudence and criminal responsibility, focusing on areas like drug offenses and mental health to tackle the roots of criminal behaviour through specialized interventions.

This paper seeks to unravel the complexities of these courts within the comparative law context. It examines the varying models adopted in different jurisdictions, analyses their effectiveness in reducing recidivism, and evaluates how they balance the dual objectives of therapeutic support and legal accountability. By comparing the structures, successes, and challenges of these courts across different legal systems, the research aims to provide a comprehensive understanding of their role and potential in reforming the criminal justice landscape.

### NATURE, ORIGIN AND DEVELOPMENT OF PROBLEM-SOLVING COURTS IN ANGLO-SAXSON LAW

Problem-solving courts are specialized judicial programs that aim to address the underlying causes of certain criminal behaviours and social issues, focusing on rehabilitation rather than merely adjudicating and punishing. These courts adopt a holistic and collaborative approach, integrating legal, therapeutic, and support services to effectively tackle the root issues behind criminal behaviour, thereby aiming to reduce recidivism and improve community well-being. This paradigm shift in the criminal justice system places a strong emphasis on the defendant's rehabilitation, overseen by a judge, and involves the application of various alternative sanctions and therapeutic measures tailored to each case (Berman & Feinblatt, 2001; Winick, 2003).

Problem-solving courts are specialized court systems that deal with different types of quality-of-life crimes and the individual problems of those who commit such crimes (Slinger & Roesch, 2010: 258). As Winick (2003: 1067) notes, "individuals usually appear before problem-solving courts because of social or psychological problems they have not recognized, or because of their inability to deal with these problems effectively". Therefore, the specialized courts that would solve those types of problems that are the cause of criminal behaviour in an informal procedure represented a turning point and an innovation in the development of the criminal court.

<sup>2</sup> According to data from the National Treatment Court Resource Center (NTCRC), as of the end of 2022, there were a total of 4,146 treatment courts in the US (National Treatment Court Resource Center [NTCRC], 2022).



Berman and Feinblatt (2001) describe five typical characteristics of problem-solving courts: (1) a focus on case outcomes, (2) efforts to reengineer government systems, (3) the use of judicial authority to change the behaviour of offenders, (4) collaboration between criminal justice and social service providers, and (5) roles that defy the traditional for members of the courtroom workgroup (Schaefer & Beriman, 2019: 346–347). Or, as described through the principles that characterize this type of court, Thielo et al. (2019: 269–270) state five basic principles of these courts: the principle of diversion from imprisonment, principle of problem solving, principle of individualized treatment, principle of accountability and principle of effectiveness.

What is undoubtedly true is that every problem-solving court modifies the traditional roles of judges in the judicial process, and links them with probation officers, social workers, and other justice system participants to form a multi-disciplinary treatment team for each offender. Judges act as team leaders and form partnerships with community welfare agencies and service providers to address the wider issues that offenders face and in the process combine the role of judicial officer and case manager to motivate the participants to take advantage of the services available for remediation (Wiener et. al, 2010: 419).

The very origin of problem-solving courts is linked to the end of 1980s, when in the United States of America, the ruling elite declared the War on Drugs due to the cocaine/crack cocaine epidemic, which resulted in “low-level drug offenders flooded the courts and crowded correctional facilities” (Mitchel, 2011: 848). Many of these offenders, notes Mitchell (2011), “were re-arrested and re-processed through the system shortly after being released”, so “drug courts provided jurisdictions an innovative and potentially effective means of dealing with the surge in the number of drug offenders and the chronic nature of their criminal behaviour.”

Therefore, the era of these specialized courts begins with the formation of drug courts in the USA and the adoption of the principle of restorative justice, which promotes compensation for victims of criminal acts, and also with the emergence of the concept of therapeutic jurisprudence which can be seen as a theoretical grounding for this developing judicial movement.<sup>3</sup>

The first drug court was formed in 1989 in Miami-Dade County, Florida, and this first generation of drug-treatment courts has served as a model for the development of a number of other problem-solving courts. Other specialized courts have been established later, however, to address mental illness, family violence, homelessness, and other concerns that are suitable to a problem-solving methodology.

However, it should be said that it is not possible to present a single procedure for all problem-solving courts, because there are different working methodologies before drug courts, mental-health courts or domestic violence courts, and there are also differences in different countries within the same courts. But there are certain methodologies based on the

<sup>3</sup> Therapeutic jurisprudence emerged in the late 1980s, initially focusing on mental health law as an interdisciplinary academic field. It critiqued various aspects of mental health law, pointing out that some laws intended to assist individuals were instead producing negative psychological outcomes. This concept extends beyond assessing the therapeutic effects of legal rules and procedures; it also examines the application of these laws by legal professionals, including judges, lawyers, police officers, and expert witnesses. For instance, the manner in which lawyers interact with their clients, both in the office and courtroom, can significantly affect their clients' emotional health. This observation has led to an expanding body of literature on the best practices for attorneys in terms of therapeutic interactions with clients (Winick, 2003: 1062–1063).



concept of therapeutic jurisprudence that are used in all problem-solving courts (Bajović, 2010: 261):

- integration of treatment services with judicial case processing;
- ongoing judicial intervention;
- close monitoring of and immediate response to behaviour;
- multidisciplinary involvement;
- collaboration with community-based and governmental organizations.

These characteristics are the basis of every specialized court and impose a strong and frequent interaction between the judge and the specialized team with the defendant, to rehabilitate him and guide them back to a normal course of life. To accomplish this objective, a combination of non-custodial sanctions and measures are implemented alongside treatment programs. This approach is adopted to prevent the incarceration of the defendant in a correctional facility, thereby avoiding the profound psychological effects that can result from a prison sentence.<sup>4</sup>

### *TYPES OF PROBLEM-SOLVING COURTS*

In Anglo-American legal systems, specialized courts have diversified into various types of problem-solving courts, each designed to address distinct issues within the criminal justice system. Drug courts, the most prevalent and varied among these, spearheaded this innovation, focusing primarily on offenders with drug misuse issues, and paved the way for the development of other specialized courts like mental health courts, domestic violence courts, and community courts over the last two decades (Casey & Rottman, 2005; Berman & Feinblatt, 2001; Winick, 2003).

Each type of problem-solving court reflects a tailored approach to specific legal and social issues, demonstrating the versatility and effectiveness of this model in the broader context of comparative law. Within this paper, special attention will be given to drug courts, mental health courts, and domestic violence courts, as the three most specific and most common types of these specialized courts.

### *DRUG COURTS*

As has been said, drug courts emerged in the United States in the late 1980s, initially as a response to the growing drug crisis and its impact on the criminal justice system, so the first drug court was established in Miami-Dade County, Florida, in 1989, with the aim of offering rehabilitation instead of traditional punitive measures for drug offenders. Nolan (2009: 11) describes that “the Miami court became the essential model for over twenty-one hundred drug courts established throughout the United States since that time”, so that although they differ from country to country, they share certain basic characteristics concerning the facts that all “drug courts offer drug offenders, as an alternative to the

<sup>4</sup> Based on a study carried out in the United States of America in a prison in New Jersey in the middle of the 20th century, it has been determined that there are five basic forms of deprivation faced by convicted persons in prisons: deprivation of freedom, deprivation of material goods and services, deprivation of heterosexual relationships, deprivation of autonomy and deprivation of security (see Sykes, 2009: 520–527).



normal adjudication process, an intensive court-based treatment program, where participants or “clients” (as they are typically called in drug court) return regularly to the courtroom, where they are engaged directly and personally with the judge”.

Primarily, specialized criminal courts for adult drug addicts provide alternatives to imprisonment, requiring offenders to participate in intensive drug rehabilitation programs for at least a year, along with regular and random drug testing to ensure adherence to the program. Offenders are periodically reviewed by specialized judges who assess their progress, with successful compliance potentially leading to dismissed charges or non-custodial sanctions, while failure to comply may result in imprisonment (see Harris, 1997: 23–24).

Criminal acts that are the subject of these proceedings are related to drug use or driving under the influence of drugs, whereby criminal acts with elements of violence are excluded. Mitchell et al. (2012: 61) point out that in most courts a non-violent perpetrator of a criminal offense usually means a perpetrator who has not previously been charged or convicted of a serious criminal offense with elements of violence.

Also, when it comes to criminal acts where there are victims who have been harmed by those acts, among the obligations imposed on the perpetrators is the obligation to compensate for damages. Moreover, Fulkerson (2009) emphasises that the application of principles of restorative justice such as re-integrative shaming, relational rehabilitation, and family group conferencing, to the drug-court process, can enhance and improve the results of those courts and their impact on the problem of addiction.

So, this is a special type of probation concerning a special type of delinquent – drug addicts (as well as alcohol addicts), with the fact that the supervision of the fulfilment of the assumed obligations is partially taken over by a judge specially trained for this area, in order to the efficiency be increased (Tešović, 2018: 119).

The success of drug courts has been largely measured in terms of reducing recidivism and facilitating rehabilitation. Studies have shown that participants in drug courts are less likely to reoffend compared to those in traditional courts. Fulkerson et al. (2013: 1310) note that the drug court operates with the treatment coerced by threat of sanctions and as with any other criminal punishment that is an alternative to incarceration, the drug court produces success stories and also those who are not able to complete the program successfully. In the end of the study, they found that drug courts offer effective therapeutic interventions leading to lower recidivism rates and underline that “this study suggests that older, more educated offenders, and those who enter the program with a clearer goal of defeating addiction, rather than avoiding incarceration, have a greater likelihood of separating from the drug court as *successful* rather than *unsuccessful*”.

In one systematic review of 154 studies (Mitchell et al., 2012) drug court programmes were found to be effective-reducing recidivism at three years follow-up for adult drug courts and drunk-driving drug courts – DWI (recidivism rates were just over one-third (38 percent) for program participants, compared to half (50 percent) for comparable non-participants), but there is a smaller effect from juvenile drug courts where program participation reduces recidivism from 50 percent to 44 percent.

Bearing in mind the results of the studies above and the generally growing interest in the practice of drug courts, in the last years the United States has had an expansion of these



courts. Even the President's Commission on Combating Drug Addiction and the Opioid Crisis recommended in 2017 that every federal district court should establish a drug court and that the Department of Justice "urges states to establish drug courts in every county" (Collins, 2021: 1575–1576).

The adoption of drug courts in the Anglo-Saxon legal region has seen significant variation and growth, with Australia establishing numerous courts, each shaped by local agents and practices (Schaefer & Beriman, 2019: 346). New Zealand introduced Alcohol and Other Drug Treatment Courts first as a pilot and then permanently in 2019, offering alternatives to incarceration for offenders with substance use disorders (Ministry of Justice of New Zealand, 2023). Canada's first drug court in Toronto, influenced by American models, focuses on non-violent offenders with cocaine or opiate addiction (Slinger & Roesch, 2010: 259).

In Scotland, the pilot of drug treatment courts in Glasgow and Fife marks a shift towards therapeutic jurisprudence within their legal system, integrating therapeutic interventions for individuals with substance abuse issues (McIvor et al., 2003). Ireland's Dublin Drug Treatment Court exemplifies a problem-solving court aimed at drug dependency in offenders, reflecting the principles of therapeutic jurisprudence and the complexities of adapting policies from other jurisdictions, notably the United States (Butler, 1999).

In England and Wales, the influence of the US model led to the establishment of several drug courts as pilot projects. Unique to this region is the London Family Drug and Alcohol Court (FDAC)<sup>5</sup> addressing parents with addiction or domestic violence issues. This court offers a rehabilitation program under expert guidance, enabling parents to retain custody of their children upon successful completion, blending elements of family, civil, and criminal law (Tešović, 2018: 112–113).

It is important to say that, despite their success, drug courts face several challenges. One issue is the balance between therapy and legal responsibility, particularly regarding the use of coercion in treatment. Thus Casey (2004: 1498–1499) emphasises that problem-solving courts, in contrast to traditional courts, rely more on the court's coercive power to initiate treatment than on the defendant's voluntary waiver of rights. The author correctly highlights that the decision to enter or exit a problem-solving court is crucial. Often, the choice to participate in such a court is seen as coercive, especially when it is influenced by the threat of a lengthy jail sentence. However, within the criminal justice system, the inherently coercive aspect of plea bargaining and administrative factors tends to reduce the courts' focus on the actual content of the agreements that criminal defendants make.

Additionally, Wiseman (2005) highlights the need for policy frameworks to ensure the consistent and effective operation of drug courts across jurisdictions. Namely, drug-courts therapy model was developed without any theoretical basis, so it was not the product of academic research and reflection, but resulted from experimentation by practitioners who recognized the failures of the existing traditional model of criminal proceedings (Fulker-son, 2009: 264).

<sup>5</sup> FDAC achieved significantly better outcomes than normal proceedings in an independent evaluation led by Lancaster University, among which the most significant are that 40% of FDAC mothers were no longer abusing substances, compared to 25% of the comparison mothers, as well as that 25% of FDAC fathers were no longer abusing substances, compared to 5% of the comparison fathers. Also, when families were followed up a year or more after proceedings ended further neglect or abuse of children occurred in 25% of FDAC families compared with 56% of comparison families (Family Drug and Alcohol Court, 2023).



So, question of the legality of drug courts and other problem-solving courts could be an issue. Schaefer and Beriman (2019: 352) use on purpose the term “constitutionality” pointing out that scholars and activists have raised concerns about the constitutionality of certain aspects of all problem-solving courts, citing three main issues. Firstly, the role of judges in these courts is seen as potentially compromised, deviating from their traditional impartial position between two parties, as highlighted in works by McCoy et al. (2015), and conflicting with guidelines on judicial conduct. Secondly, the ethical dilemma of coerced treatment versus offender rights is debated, with critiques around the voluntary nature of participation and the balance between therapeutic and punitive elements. Lastly, Schaefer and Beriman (2019: 353) notes the existence of concerns about due process arise, particularly regarding the potentially unrealistic obligations and harsher sanctions imposed on offenders compared to traditional courts, along with issues related to case processing and the interpretation of offenders’ rights.

Every Anglo-Saxon legal system has faced challenges in integrating drug courts and other problem-solving courts within traditional judicial processes. Some states and territories have enabled the judiciary to creatively operate these courts within the bounds of the existing criminal law, while others await specific supporting legislation; both approaches present distinct advantages and disadvantages (Payne, 2006). However, without the adequate procedural safeguards, there is a risk that offenders might face greater harm in these courts than in traditional courts, contrary to the goals of therapeutic jurisprudence.

In summarizing the impact and future direction of drug courts, it is imperative to recognize that these institutions represent a fundamental shift in the approach towards drug-related offenses within the criminal justice system. This paradigm shift is not merely a procedural change but signifies a deeper transformation in the philosophy guiding the legal response to drug offenses (Huddleston & Marlowe, 2011). Although they have yielded promising outcomes in addressing drug-related offenses through a rehabilitative lens (Mitchell et al., 2012), their future success is contingent upon a sustained commitment to research, policy innovation, and the continuous refinement of their practices. It is through these concerted efforts that drug courts can fully realize their potential as transformative agents in the realm of criminal justice and public health (Winick, 2003).

### *MENTAL HEALTH COURTS*

Mental health courts represent a pivotal innovation in the criminal justice system, providing a therapeutic alternative for individuals with mental health disorders. They originated in the late 1990s in the United States as a response to the increasing number of individuals with mental health issues entering the criminal justice system. These courts were designed to provide a therapeutic alternative to the traditional criminal justice process, with the first mental health court established in Broward County, Florida, in 1997.<sup>6</sup>

Casey and Rottman (2005: 46) highlight that, according to a Bureau of Statistics estimate, 16 percent of the state prison population suffers from mental illness, leading to the establishment of mental health courts. These courts, drawing inspiration from drug courts, offer defendants with severe mental illnesses the opportunity to engage in communi-

<sup>6</sup> According to the data from the National Treatment Court Resource Center (NTCRC), as of the end of 2022, there were a total of 618 mental health courts in the US (NTCRC, 2022).



ty-based treatment programs under judicial supervision, with regular assessments and tailored treatment plans monitored for compliance and progress.

Mental health courts operate on several foundational practices and key elements designed to address the specific needs of individuals with mental illnesses within the criminal justice system. Casey and Rottman (2005: 47) note that participation is voluntary, with an emphasis on early identification and intervention to create a therapeutic environment that reduces trauma. These courts aim to decrease the stigma associated with mental illness and encourage active participation in court proceedings. A judge, legal representatives, and a multidisciplinary team of court and treatment professionals collaborate closely, adopting a less formal court process. Case management is central, ensuring client-centered treatment tailored to each individual's needs. Regular status hearings provide a platform to review progress and adapt treatment plans as necessary, always with a consideration of public safety in decisions (Walker et al., 2016: 22).

However, practices in mental health courts can vary. Factors such as eligibility, based on specific mental health conditions or offenses, and procedural requirements like pleading requirements, differ among courts. Similarly, the terms of supervision and the application of sanctions for non-compliance can vary, as can the methods used for case closure. Some courts may withhold adjudication or record no conviction, while others may opt for suspended sentences or dismiss charges under deferred dispositions (Casey & Rottman, 2005). These differences reflect the adaptability of mental health courts to the diverse legal and procedural contexts in which they operate (Steadman et al., 2001).

The effectiveness of mental health courts is evident in various metrics, notably through reduced recidivism rates and enhanced mental health outcomes for participants, as demonstrated in studies such as those by Yuan and Capriotti (2019), which indicate a significant decrease in re-arrest rates post-participation in these programs. Research reveals that participants in mental health courts not only experience reduced rates of rearrest and rehospitalization compared to non-graduates but also benefit from greater access to necessary treatment services and more intensive treatment levels than before their involvement in the program (Casey & Rottman, 2005: 48). Furthermore, these courts are characterized by their provision of personalized treatment plans, specifically designed to address the individual needs of each participant, contributing to their overall effectiveness.

Mental health court program offers a more humane and effective approach to dealing with mentally ill offenders, providing them with access to mental health services and support. Also, it is very common for the offender to have co-occurring mental and substance use disorders, and these specialized courts must respond to both of these challenges at the same time. Peters et al. (2017: 483) note that, despite advancements in the United States in providing services for offenders with Co-Occurring Disorders (CODs) through integrated approaches like Risk-Need-Responsivity (RNR), Cognitive-Behavioural Therapy (CBT), and Integrated Dual Disorders Treatment (IDDT), the implementation of these comprehensive treatments in mental health courts remains limited, as they currently reach only a small segment of offenders with CODs.

It is significant to say that mental health courts face several challenges. One of the main issues is ensuring consistent and equitable access to these courts across the state. For example, in Australia, five existing mental health courts are primarily located in large urban centres (Australian Institute of Judicial Administration, 2023), reflecting the country's





high urbanization rate where 89% of the population lives in metropolitan areas and 67% in capital cities, and this geographic concentration inevitably leads to limited access and a disadvantage for residents in rural and remote areas in accessing all problem-solving courts (Schaefer & Beriman, 2019: 351).

Also, there is a challenge of balancing the therapeutic goals of mental health courts with the legal and punitive aspects of the criminal justice system. The integration of therapeutic objectives with traditional legal procedures requires careful consideration to maintain the integrity of both the health and justice systems (Casey & Rottman, 2005).

Nolan (2009: 19–20) observes that mental health courts arose as a response to the void in community-based mental health services created by the deinstitutionalization movement of the 1960s and 1970s, leading the criminal justice system to increasingly manage offenders with mental health issues, often with challenging outcomes. Despite debates in the United States over whether funds for problem-solving courts should rather enhance social services to prevent mentally ill individuals from entering the justice system, these courts continue to receive significant investment and are regarded as essential in addressing social problems formerly managed by non-legal support systems.

Also, concerns have been raised about whether mental health courts ensure voluntary participation. Casey and Rottman (2005: 48–49) document this apprehension, while evidence on the subject remains mixed. Additionally, slightly more than half of the participants realized during intake that their participation was not mandatory, often learning this through means outside of the court. This suggests there might be some disconnect in participants' understanding of the voluntary aspect of their involvement, especially if they do not consider the court's process to be coercive. Research indicates that individuals are likely to be more committed to treatment objectives when they perceive their participation as voluntary, suggesting a need for further study in this area and for mental health courts to implement more strategies to ensure the voluntariness of participation (Walker et al., 2016: 26).

As a conclusion, it is important to say that mental health courts, established in response to the growing presence of individuals with mental health disorders in the criminal justice system, offer a critical therapeutic alternative to traditional legal processes. These courts aim to reduce stigma, promote active participation, and provide tailored treatment plans under judicial supervision, addressing the unique needs of individuals with mental health issues (Casey & Rottman, 2005; Steadman et al., 2001). As these courts evolve, continuous efforts are necessary to refine their processes and ensure their effectiveness in serving both public safety and the needs of mentally ill offenders.

### *DOMESTIC VIOLENCE COURTS*

Unlike other problem-solving courts, domestic violence courts address situations that include both defendants and distinctly recognized victims. Consequently, these courts provide therapeutic support tailored to address the issues faced by both the victims and the offenders.

However, Casey and Rottman (2005: 40) have observed that there is hesitancy among court professionals to classify domestic violence courts as problem-solving courts, pri-



marily because these offenses involve violence and victims, with proceedings that tend to be adversarial and focused on learned behaviours rather than addictions. While battering intervention programs are utilized to promote accountability, their solitary effectiveness in altering perpetrator behaviour is ambiguous, and these courts distinctively involve both victim and offender, especially in cases of protection order violations.

The inception of domestic violence courts in the 1990s marked a pivotal shift in the judicial response to domestic violence as a grave social concern. The first court dedicated to domestic violence was inaugurated in New York City in 1996, setting a precedent for specialized legal and rehabilitative services in such cases (Labriola et al., 2009) and now there are hundreds of courts nationwide in the USA that have special processing mechanisms for domestic violence cases.

When it comes to other countries of the Anglo-Saxon legal area, the expansion of courts for domestic violence also affected them, so in Australia, for example, these courts have specialized processes and support services to address the complexities of domestic violence cases, with a focus on victim safety and offender accountability. The Family Violence Court Division in Victoria, for example, offers integrated responses involving legal, social, and health services (Schneller, 2012: 9–10).

Canada features multiple domestic violence courts with a keen focus on the safety of victims, adopting a multi-agency approach that involves the justice system, social services, and community groups to support affected individuals comprehensively (see Koshan, 2018). Similarly, New Zealand has established family violence courts that adopt a therapeutic approach, striving to reduce repeat offenses and enhance family welfare (Schneller, 2012: 8).

Nolan (2009: 14) observes that these courts are distinguished by the careful monitoring by a judge with specialized training for these intricate cases. The judge leads a multidisciplinary team, which includes not just the usual lawyers, probation officers, and treatment providers found in other problem-solving courts, but also victim advocates, shelter workers, and sexual assault service providers. With an arsenal of creative sentencing options and specialized programs for counselling and substance abuse, the judge is well-equipped to confront the specific issues that arise in domestic violence cases.

The efficacy of domestic violence courts is often gauged by their ability to secure safety and recovery for victims, deter reoffending, and enhance case management. Research indicates that these courts have been successful in achieving improved safety for victims and enforcing protective orders more reliably (Cissner et al., 2015). Yet, measuring their impact on recidivism remains a challenge due to methodological diversity and the intricate nature of domestic violence cases.

Key challenges for domestic violence courts include safeguarding victim safety and independence, striking a balance between therapeutic and punitive methods, and contending with limited resources (Labriola et al., 2009). They also face the task of meeting the needs of diverse populations and ensuring coordinated efforts among various entities, such as law enforcement, social services, and the judicial system, which are vital for their success (Wolff, 2014).

In sum, domestic violence courts are a crucial advancement in the legal treatment of domestic violence. Nolan (2009) highlights the specialized role of judges in these courts, who,



along with a diverse team of professionals, offer a suite of interventions designed to address the particular needs arising from domestic violence scenarios. Despite the challenges in quantifying their impact on recidivism due to the complex nature of domestic violence and methodological diversity in research, studies have shown that domestic violence courts have been effective in providing protection and recovery for victims (Cissner et al., 2015). The future of domestic violence courts depends on overcoming challenges such as ensuring victim safety, balancing therapeutic and legal approaches, managing resources effectively, and catering to the needs of diverse populations (Labriola et al., 2009; Wolff, 2014). As these courts evolve, continuous efforts are needed to refine their processes and ensure their effectiveness in serving both public safety and the needs of individuals affected by domestic violence.

### INTRODUCING THE CONCEPT OF PROBLEM-SOLVING COURTS INTO THE EUROPEAN-CONTINENTAL LEGAL SYSTEM

The rise of problematic drug use has become a global challenge, impacting societies and legal systems worldwide. In response, European nations have been reevaluating their strategies, particularly in the integration of problem-solving methodologies into their judicial systems like especially drug treatment courts.

Traditionally, Europe's response to drug-related crimes has been predominantly punitive, especially if there are recidivists involved (Đorđević & Bodrožić, 2020). This approach, however, often fails to address the root issues of addiction, leading to high recidivism. This inadequacy has led to a paradigm shift, viewing drug abuse as a broader public health and social issue, a perspective supported by the European Monitoring Centre for Drugs and Drug Addiction ([EMCDDA], 2023).

In the European-continental legal system, several countries have been influenced by the concept of problem-solving courts mainly in the form of drug courts. The Netherlands has incorporated problem-solving approaches in its judicial system, especially for cases involving drug offenses and family matters. This includes specialized courts and procedures that aim to address the underlying issues related to these offenses (Boone & Langbroek, 2019).

Also, Norway has implemented certain types of problem-solving courts, like its pilot project for drug treatment courts, and both Spain and Sweden have explored problem-solving court models, particularly for drug-related offenses, as part of a broader shift in addressing such issues within the legal framework (EMCDDA, 2023). Known for its innovative approach to drug decriminalization, Portugal has also implemented problem-solving strategies within its legal system for drug-related cases.<sup>7</sup>

Belgium has been a pioneer in Europe in establishing drug courts, exemplified by the Ghent Drug Treatment Court, which marks a significant shift in addressing drug offenses by focusing on rehabilitation over punishment. The Belgian judicial system's approach has evolved, moving from traditional punitive responses to more supportive, rehabilitative

<sup>7</sup> Portugal has decriminalized the use of drugs, treating users as individuals in need of assistance rather than punishment, while still maintaining drug dealing as a criminal offense. This approach has not led to an increase in drug usage and has significantly reduced drug-related harm and the incarceration rate for drug offenses. The strategy has proven to be both innovative and successful in addressing the country's drug-related issues (Kury et al., 2019: 286).



strategies. This paradigm shift materialized with the inception of the first Belgian drug court in Ghent in 2008, adapting the American drug court model to align with European legal practices (Boone & Langbroek, 2019: 64; Kruithof et al., 2016: 30).

The Ghent Drug Treatment Court methodology involves a series of hearings, beginning with an assessment of the defendant's willingness to address their drug problem and the design of a tailored treatment plan. This approach facilitates continuous monitoring and adaptation, ensuring effective management of the defendant's rehabilitation process (see Kruithof et al., 2016).

Also, the Ghent Drug Treatment Court has shown promising results in recidivism reduction and compliance with treatment programs (Kruithof et al., 2016: 69). These findings align with other research on drug courts, primarily from the United States, which have reported similar outcomes in substance use reduction and recidivism (Huddleston & Marlowe, 2011).

Despite the successes, challenges remain, particularly in adapting the model across different legal cultures and ensuring consistent funding. Ongoing training for drug court professionals and the development of a specific legal framework for drug courts are essential for their sustainability (National Association of Drug Court Professionals, 1997: 21).

Adapting the drug court model to the European context required careful consideration of the continental legal culture and systemic constraints. In Belgium, the development of the Ghent drug court involved a collaborative effort with the Bar Association, the Public Prosecutor's Office, judges, and drug treatment providers. The model aimed to align with the fundamental principles of international drug courts while respecting the unique aspects of the Belgian (European) legal system.

So, the integration of problem-solving court models, such as drug courts, into the European-continental legal framework presents a significant challenge due to the distinct procedural and legal traditions inherent in this region. This challenge is primarily rooted in the need to reconcile the principles of therapeutic jurisprudence, which are central to problem-solving courts, with the civil law systems that are predominant in Europe.

Therapeutic jurisprudence, originating in the United States, views the law as a therapeutic agent and aims to assess the psychological impact of legal processes on individuals. In Europe's civil law systems, which are defined by codified rules and less flexible than the common law system where therapeutic jurisprudence flourished, integrating this approach requires balancing the rigidity of these systems with the need for therapeutic flexibility. Gaining acceptance for problem-solving court models in Europe, where traditional legal systems are deeply embedded in the culture, poses a challenge for legal professionals accustomed to adversarial or inquisitorial systems and necessitates a multidisciplinary, holistic approach to handling defendants (Wexler, 2005: 749). To facilitate this transition, educational initiatives, training programs, and public awareness campaigns are crucial to familiarize legal professionals with the goals of problem-solving courts and to build public trust and understanding of their role in addressing complex social issues.

In conclusion, while the integration of problem-solving courts into the European-continental legal framework presents significant challenges, it also offers an opportunity to enhance the legal system's responsiveness to the complexities of social issues such as drug dependency. This requires a thoughtful and concerted effort to adapt the principles of ther-



apeutic jurisprudence within the existing legal framework and culture, coupled with effective strategies to garner acceptance and support from legal professionals and the public.

## PROBLEM-SOLVING COURTS AND THE FUNDAMENTAL RIGHTS OF THE DEFENDANT IN CRIMINAL PROCEEDINGS

The introduction of problem-solving courts represents a paradigm shift in addressing certain types of criminal behaviour. These courts, while innovative, raise critical questions about the fundamental rights of defendants in criminal proceedings. The balance between therapeutic intervention and legal rights is a complex and nuanced issue.

One of the primary concerns is ensuring due process rights are upheld in problem-solving courts. These rights include the right to a fair trial, the right to legal representation, and the right against self-incrimination. Lane (2003) emphasises the importance of upholding due process rights within these courts. He argues that while problem-solving courts aim to address underlying issues such as addiction or mental health problems, they must not compromise on the fundamental legal rights of defendants.

Collins (2021) further explores this tension, highlighting the potential risks of undermining traditional legal safeguards in the pursuit of therapeutic goals. Collins (2021) points out that the unique nature of these courts could lead to a dilution of standard legal procedures designed to protect defendants' rights.

Problem-solving courts must strike a balance between their therapeutic goals and the legal rights of defendants. This includes ensuring voluntary participation in therapeutic programs and respecting the autonomy of the defendant. The challenge is to provide effective interventions without compromising legal standards and rights. Schaefer and Beriman (2019: 352–353) discuss the Australian experience with these courts and they note the challenges in integrating therapeutic jurisprudence within a legal framework while ensuring defendants' rights are not sidelined.<sup>8</sup>

Casey (2004) argues that while problem-solving courts have noble intentions, there is a risk of a legitimacy crisis if these courts do not adequately protect the rights of defendants. Problem-solving courts must ensure that defendants understand their rights and the implications of participating in these alternative judicial processes. This includes the voluntary nature of participation, the right to legal representation, and the right to a fair trial. The courts need to balance their therapeutic objectives with these fundamental legal rights, ensuring that defendants are not coerced into participating or giving up their legal rights unwittingly.

In synthesising all mentioned perspectives, the conclusion is that problem-solving courts hold great promise in addressing criminal behaviour rooted in social and psychological issues. Nevertheless, their success is contingent upon a judicious application that respects both the therapeutic needs of defendants and their inviolable legal rights. The continued evaluation and adaptation of these courts are necessary to ensure their effectiveness and to maintain public trust in the legal system.

<sup>8</sup> See more in the section subtitled *Drug Courts*.



## CONCLUSION

This paper has explored the concept of problem-solving courts within the framework of comparative law, focusing on their innovative combination of therapeutic jurisprudence and legal responsibility. These courts, emerging in various jurisdictions, represent a significant shift in addressing the complexities of criminal behaviour, particularly in cases involving substance abuse and mental health issues. The comparative analysis across different legal systems has highlighted their potential in reducing recidivism, enhancing offender rehabilitation, and promoting social reintegration.

The evolution of problem-solving courts, as discussed in this study, reflects a broader trend in the criminal justice system towards more rehabilitative and therapeutic approaches. Notably, the initiation of these courts in the United States and their subsequent adaptation in countries like Canada, Australia, the United Kingdom, and parts of Europe underscores the global recognition of the need for a more nuanced approach to criminal justice. This approach is essential in cases where underlying social or psychological issues play a significant role in criminal behaviour.

However, the implementation of these courts has not been without challenges. As highlighted by Lane (2003) and Collins (2021), the integration of therapeutic jurisprudence raises crucial questions about the fundamental rights of defendants, particularly in terms of due process. The balance between providing effective therapeutic interventions and upholding legal standards is delicate and requires ongoing scrutiny and adaptation. This balance is further complicated by the need to gain acceptance among legal professionals and the public, as observed in the research by Schaefer and Beriman (2019) and Casey (2004).

In conclusion, problem-solving courts represent an important innovation in the legal approach to complex social issues. While they offer promising avenues for addressing the root causes of criminal behaviour, their success depends on their ability to uphold legal standards and the rights of defendants. The continued evaluation and adaptation of these courts are essential to ensure their effectiveness and sustainability within the broader framework of the criminal justice system.

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